IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION NO. 3195 OF 1997

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the Civil Judge ?

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SANTOSH PRINTERS - Petitioner(s)
Versus
DINESH TULSIDAS - Respondent(s)

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Appearance :
Shri D. G. Chauhan for Petitioner(s).
Ms. Vinita Vinayak for Respondent(s).

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG

Date : 31/07/2007

ORAL JUDGMENT

The petitioners, being aggrieved by the award dated 20th November, 1996 passed by the learned Labour Court, Rajkot in

Reference (LCR) No.2158 of 1988, directing reinstatement of the respondent-workman with 40% back-wages, ares before this Court with a submission that the award is bad and deserves to be quashed.

2. The respondent came to the Court with a submission that he had been working with the present petitioners since November-1986 and under the circumstances, his removal from service amounted to illegal retrenchment. The petitioners came to the Court and stated that they had appointed the present respondent on 1st February, 1988, the respondent-workman met with an accident and since 25th March, 1988, he did not report for duty. During the course of evidence, they had produced the attendance register for the period between December-1987 to March-1988 to show that the present respondent did not work with them prior to 1st February, 1988.

3. The learned Court below has drawn an adverse inference against the interest of the present petitioners on the ground that they, being in possession of the original records, failed in producing the same.

4. Shri D. G. Chauhan, learned Counsel for the petitioners, submits that the basic burden to prove that the workman had worked for 240 or more days in twelve calendar months preceding the date of termination, was upon the workman and if the workman did not prove

the fact or summon the records, then, no adverse inference could be drawn against the present petitioners.

5. Ms. Vinita Vinayak, learned Counsel for the respondent, on the other hand, submitted that in view of the judgements, which were holding the field at the material time, the respondent thought that if the original records are not produced by the petitioners, an adverse inference would be rightly drawn against the employer. She submitted that present would be a case where the lower Court must be held to be justified in drawing the adverse inference.

6. The Supreme Court has repeatedly observed that the basic burden to prove that the workman had worked for 240 days in twelve calendar months preceding the date of retrenchment, would be upon the workman. In a given case, where the workman summons the records from the possession of the employer and the employer does not produce the records, then, in such circumstances, the Court would be justified in drawing the adverse inference against the employer. In the present case, unfortunately, the workman did not summon the records from the employer through the agency of the Court.

7. As the basic burden was not discharged by the present respondent-workman, the learned Court below was not justified in

drawing the adverse inference against the petitioner-employer.

8. Taking into consideration the totality of the circumstances, I hereby set aside and quash the award, but, remand the matter back to the learned Labour Court, Rajkot with a direction that if the parties make an application for leading further evidence, then, appropriate opportunity to lead evidence shall be given to the parties. If the workman makes an application for summoning the records, then, the learned Court below shall allow such application and direct the present petitioners to produce the records. In case the petitioners do not produce the records or do not assign any reason, rather justifiable reason for non-production of the records, then, the learned Labour Court would be entitled to draw the adverse inference against the interest of the employer. The parties present in the Court shall appear before the learned Labour Court on 10th September, 2007. The parties shall file a copy of this order before the said Court enabling it to know as to what it is required to do. Within a period of eight months from the date of appearance of the parties, the learned Labour Court shall finally dispose of the matter.

9. The petition to the extent indicated above is allowed. Rule is made absolute. No costs.

[R.S.Garg, J.]

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